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THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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UNITED STATES OF AMERICA,  
  
Plaintiff,

v.

JESUS GRIJALVA-MARTINEZ,  
  
Defendant.

**MEMORANDUM DECISION AND  
ORDER DENYING MOTION FOR  
EXTENSION OF TIME**

Case No. 4:19-cr-00003-DN-PK

District Judge David Nuffer

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Defendant Jesus Grijalva-Martinez filed a motion seeking a 90-day extension of time to file a motion under 28 U.S.C. § 2255 (“Motion”).<sup>1</sup> “The Antiterrorism and Effective Death Penalty Act (AEDPA) (of 1996) amended 28 U.S.C. § 2255 to allow federal prisoners one year from the date on which the judgment of their conviction became final to file a motion to vacate, set aside or correct their sentence.”<sup>2</sup> And district courts are not permitted to alter that limitations period in a prisoner’s underlying criminal case. Therefore, Defendant’s Motion<sup>3</sup> is DENIED.

**DISCUSSION**

Defendant asserts in his Motion that he is concerned he will not be able to timely file a § 2255 motion because he has not received requested contact information for his trial counsel, as well as documents from his counsel and the court.<sup>4</sup> Regardless of the merits of the request, the relief Defendant seeks cannot be given in this criminal case. “Congress has expressly limited the time in which a prisoner can bring a § 2255 motion to one year after his conviction becomes

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<sup>1</sup> Motion for Extension of Time to File a § 2255 Motion (“Motion”), [docket no. 358](#), filed September 6, 2022.

<sup>2</sup> *United States v. Burch*, 202 F.3d 1274, 1275 (10th Cir. 2000).

<sup>3</sup> [Docket no. 358](#), filed September 6, 2022.

<sup>4</sup> Motion at 1.

final, and any extension of this time period contravenes Congress' clear intent to accelerate the federal habeas process.”<sup>5</sup> Extending the limitations period beyond one year will “frustrat[e] the intent of Congress that claims under 28 U.S.C. § 2255 be advanced within one year after a judgment of conviction becomes final unless any of the other circumstances in 28. U.S.C. § 2255 are applicable.”<sup>6</sup> If Defendant desires additional time relating to a § 2255 motion, he must first initiate § 2255 case and seek such relief in the § 2255 case.

Regardless, Defendant still has ample time to file a § 2255 motion. The one-year limitation to file a § 2255 motion “run[s] from the *latest* of” four events,<sup>7</sup> one of which is “the date on which the judgment of conviction becomes final.”<sup>8</sup> “Becoming final” includes when a conviction is entered by a district court;<sup>9</sup> when a court of appeals affirms that conviction or the time for an appeal expires;<sup>10</sup> and when the Supreme Court “affirms on the merits, denies a petition for writ of certiorari, or the time to file a certiorari petition expires.”<sup>11</sup> Defendant’s conviction in district court entered September 23, 2021.<sup>12</sup> Defendant timely appealed the conviction,<sup>13</sup> and the conviction was affirmed by the Tenth Circuit Court of Appeals on March 22, 2022.<sup>14</sup> Defendant had 90 days from when the Tenth Circuit’s affirmance was entered, until June 20, 2022, to file a writ of certiorari to the Supreme Court.<sup>15</sup> At the earliest, Defendant’s

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<sup>5</sup> *Washington v. United States*, 221 F.3d 1354, 1 (10th Cir. 2000).

<sup>6</sup> *United States v. Duffus*, 174 F.3d 333, 337 (3d Cir. 1999).

<sup>7</sup> 28 U.S.C. § 2255(f) (emphasis added).

<sup>8</sup> *Id.* § 2255(f)(1).

<sup>9</sup> *Burch*, 202 F.3d at 1276.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Judgment in a Criminal Case, [docket no. 340](#), filed September 23, 2021.

<sup>13</sup> Notice of Appeal, [docket no. 342](#), filed October 1, 2021.

<sup>14</sup> Order and Judgment, [docket no. 356](#), filed March 22, 2022.

<sup>15</sup> U.S. Sup. Ct. R. 13(1), (3); *See Miscellaneous Order*, Order List: 594 U.S. Monday, July 19, 2021.

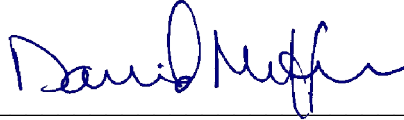
one-year limitation period would not run until March 22, 2023,<sup>16</sup> approximately 6 months from now.

**ORDER**

THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion<sup>17</sup> is DENIED.

Signed September 19, 2022.

BY THE COURT

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer  
United States District Judge

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<sup>16</sup> 28 U.S.C. § 2255(f)(1).

<sup>17</sup> [Docket no. 358](#), filed September 6, 2022.